

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**RANDY WOOD**

Clarke County, IA

ADMINISTRATIVE CONSENT ORDER

NO. 2008-AFO- 38

TO: Randy Wood  
24199 118<sup>th</sup> Street  
Columbus Junction, IA 52738

**I. SUMMARY**

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Randy Wood for the purpose of resolving an issue pertaining to a prohibited manure discharge that caused a fish kill. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

**Relating to technical requirements:**

Josh Sobaski, Field Office 6  
Iowa Department of Natural Resources  
1023 W. Madison  
Washington, IA 52353  
Phone: 319/653-2856

**Relating to legal requirements:**

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Urbandale, Iowa 50322  
Phone: 515/281-8563

**Payment of penalty to:**

Director of the Iowa DNR  
Wallace State Office Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. On June 14, 2004, Jim Sievers and Josh Sobaski, environmental specialists for DNR Field Office 6, visited a confinement facility located in the NW ¼ of Section 36, Columbus City "W" Township, Louisa County, Iowa to determine if the facility needed a Manure Management Plan. The property was owned by Ransom Robison. No hogs were in the buildings at the time of this visit and there were trees growing up around the abandoned confinement building. Mr. Sobaski observed that the confinement feeding operation was abandoned and not suitable for modern confinement livestock production. On December 4, 2006, Randy Wood purchased the property from Mr. Robison.

2. On June 18, 2007, at approximately 5:30 p.m., DNR Field Office 6 received a complaint of a fish kill in a small stream near the golf course in Columbus Junction in Louisa County. In response to this complaint, Mr. Sievers began an investigation at approximately 6:30 p.m. near the golf course. Mr. Sievers observed about 20 dead fish in a pool on the east side of X17 near the golf course. The water was turbid. Mr. Sievers checked the ammonia level. The ammonia level was at least 3 ppm. Mr. Sievers checked the stream on the north side of the entrance to the golf course. It was clear and no ammonia was present. Mr. Sievers then checked the stream south of the golf course entrance and observed some dead fish in this stream. The water was turbid and it had a slight odor. The ammonia level was at least 3 ppm. Mr. Sievers drove to a road bridge approximately ½ mile south of the golf course and the water appeared turbid. Mr. Sievers then drove to Mr. Wood's abandoned confinement site about ¼ mile south of the golf course and observed two large backhoes and a bulldozer. The confinement buildings were gone and there was a couple acres of bare dirt. At this location Mr. Sievers observed semi-solid manure. The manure was slowly flowing down gradient over ground to the west. It flowed into a small ditch that led north. This location is about ¼ mile upstream of the culvert under X17 where Mr. Sievers had first observed the dead fish.

3. On June 18, 2007, Mr. Sobaski arrived at approximately 7:30 p.m. to assist in the investigation. Mr. Sievers went to locate Mr. Wood and Mr. Sobaski went to the stream by the golf course near a culvert along an unnamed tributary of Monkey Run/Short Creek along X17. Mr. Sobaski conducted field tests and collected laboratory samples from the area. Mr. Sievers rejoined Mr. Sobaski and they traveled to the Highway 92 bridge. Mr. Sobaski and Mr. Sievers noted dead fish at the Highway 92 location. Mr. Sobaski and Mr. Sievers conducted field tests and collected laboratory samples. The field test results were as follows:

<b>Location</b>	<b>Ammonia Nitrogen (NH3)</b>	<b>Temperature (degrees Fahrenheit)</b>	<b>PH</b>	<b>Dissolved Oxygen</b>
Culvert along tributary of Monkey Run/Short Creek along X17	2.8 mg/l	~ 72 F	~7-8	4-5 mg/l

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Downstream- near bridge on HWY 92	> 3 mg/l	~ 73 F	~7-8	4-5 mg/l
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The laboratory sample results were as follows:

<b>Location</b>	<b>PH</b>	<b>Carbonaceous BOD</b>	<b>NH3</b>	<b>Total Suspended Solids (TSS)</b>	<b>Fecal Coliform</b>
Culvert along tributary of Monkey Run/ Short Creek along X17	8.5	4 mg/L	2.7 mg/L	7 mg/L	1100/100m L
Downstream- near bridge on HWY 92	8.4	3 mg/L	4 mg/L	5 mg/L	820 /100mL

4. The investigation on June 18 was ended at approximately 8:40 p.m. due to darkness. At this time, Mr. Wood contacted Mr. Sievers. Mr. Sievers explained the situation and instructed Mr. Wood to begin remediation activities.

5. On June 19, 2007 Bert Noll, Field Office 6 staff member, and Mr. Sobaski met on the site of the manure overflow with Mr. Wood and a construction equipment operator. Representatives of Natural Gas Pipeline Co. of America were present to identify the location of the underground pipeline, prior to remediation activities, to remove manure from the receiving stream and the ground surface. Mr. Noll and Mr. Sobaski proceeded to collect more field and laboratory water samples. Field tests were conducted and laboratory samples were taken from the unnamed tributary of Monkey Run/ Short Creek. This location was upgradient of the confluence where the manure flow reached the tributary. Laboratory samples were also taken down gradient at the confluence of manure flow along the unnamed tributary of Monkey Run/Short Creek. Mr. Noll and Mr. Sobaski observed a "lava flow" of manure running into the tributary. Although laboratory samples were taken at this location, field tests were not possible due to the semi-solid consistency of the manure at this location. The final tests of the day were taken down gradient of the confluence of the manure flow along the unnamed tributary of Monkey Run/Short Creek. Mr. Noll and Mr. Sobaski observed manure in the tributary. The water running over the manure was black and turbid with a manure odor.

The field test results of these locations were as follows:

<b>Location</b>	<b>Ammonia Nitrogen (NH3)</b>	<b>Temperature (degrees Fahrenheit)</b>	<b>PH</b>	<b>Dissolved Oxygen</b>
Upgradient of Confluence	.7 mg/l	~ 70 F	~7-8	~ 8 mg/l

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Downgradient of the Confluence	> 3 mg/l	~ 70	~ 7-8	~ 4 mg/l
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The laboratory results of these locations were as follows:

Location	PH	Carbonaceous BOD	NH3	TSS	Fecal Coliform
Upgradient of the Confluence	8.3	4 mg/l	0.15 mg/l	5200 mg/l	8200/100ml
At the Confluence	8.2	2270 mg/l	.65% by dry wt.	21%	1500/CFU/g
Downgradient of the Confluence	8.2	28 mg/l	42 mg/l	1400 mg/l	40,000/ 100 ml

6. The test results and on-site observations indicate that manure runoff entered the unnamed tributary of Monkey Run/Short Creek down gradient of the demolition activities from the abandoned confinement facilities. The runoff elevated ammonia levels caused the fish kill. Don Kline, biologist for the DNR Fisheries Bureau, concluded that a total of 3,399 fish valued at \$7,086 were estimated to be killed as a result of the discharge. Investigation costs were \$496.60.

7. On June 20, 2007, Field Office 6 received a written statement provided by Steve Yagel, the contractor hired by Mr. Wood to demolish the confinement feeding operation. Mr. Yagel stated that material seeped out of the earthen manure storage structure, the source of the manure runoff. The material that seeped out was not mechanically removed by any other means other than displacement by fill dirt.

8. On July 18, 2007, a Notice of Violation letter and Report of Investigation was sent to Mr. Wood for the violation associated with the fish kill. The letter cited Mr. Wood for agricultural discharges that caused water quality violations. The letter also informed Mr. Wood that these violations were being referred for further enforcement.

#### IV. CONCLUSIONS OF LAW

1. 567 IAC 61(3)"b" states that all surface waters shall be free from floating debris, oil, grease, scum, and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance. The test results and on-site observations indicate that manure runoff entered the unnamed tributary of Monkey Run/Short Creek down gradient of the demolition activities for the abandoned confinement

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facilities. This runoff caused the water to be black and turbid with a noticeable manure odor. The above facts indicate a violation of this provision.

2. 567 IAC 61(3)"c" states that waters shall be free from substances attributable to wastewater discharges or agricultural practices producing objectionable color, odor, or other aesthetically objectionable conditions. Field and lab analysis results of water samples collected during the investigation indicated the presence of animal wastes. The above-facts indicate a violation of this provision

3. 567 IAC 62(3)"d" states that waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combination which are acutely toxic to human, animal, or plant life. It was determined that the manure discharge contained elevated levels of ammonia that caused the fish kill. The above facts indicate a violation of this provision.

4. Iowa Code section 455B.186(1) states a pollutant shall not be disposed of by dumping, depositing, or discharging such pollutant into any water of the state. Mr. Wood did not remove all manure from the earthen manure storage structure. As a result, the manure from the earthen manure structure was discharged into the unnamed tributary of Monkey Run/Short Creek. The above-facts indicate a violation of this provision.

5. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC Chapter 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure discharge as a result of the demolition of the confinement buildings at Mr. Wood's property.

**V. ORDER**

THEREFORE, the DNR orders and Mr. Wood agrees to do the following:

1. Mr. Wood shall pay an administrative penalty of \$5,000.00 and restitution in the amount of \$7,582.60 for a total of \$12,582.60 in accordance with the following payment plan. The administrative penalty shall be paid first and the remaining payments shall be applied to the restitution:

\$1,575.00 due December 15, 2008;	\$1,575.00 due December 15, 2009;
\$1,575.00 due March 15, 2009;	\$1,575.00 due March 15, 2010;
\$1,575.00 due June 15, 2009;	\$1,575.00 due June 15, 2010; and
\$1,575.00 due September 15, 2009;	\$1,557.60 due September 15, 2010.

If any of the said payments are not received by the due date, the remaining penalty shall be due immediately.

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2. If the area is remediated by the previous owner in the future, Mr. Wood shall allow access to all areas necessary for proper remediation and shall bear the cost any repairs to the property after the remediation has been completed.

**VI. PENALTY**

1. Iowa Code sections 459.603 and 455B.191 authorize the assessment of civil penalties of up to \$5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to these rules, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$5,000.00. The administrative penalty is determined as follows:

Economic Benefit – The owner of the facility saved time and money by not properly removing and land applying the manure from the earthen manure storage structure. The owner likely saved tens of thousands of dollars by not properly cleaning out and land applying the manure. However Mr. Wood was not the owner of the facility at the time it was operated as an animal confinement feeding operation; therefore no economic benefit is being assessed.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by visual and olfactory observation of impact to the unnamed tributary of Monkey Run/Short Creek, including dead fish. More than 3,399 fish in the unnamed tributary of Monkey Run/Short Creek were killed by the runoff release from this confinement feeding operation. A significant number of hours were also expended in the investigation and technical outreach portion of this investigation by the DNR Field Office staff. Based on the above considerations, \$3,000.00 is assessed for this factor.

Culpability – Mr. Wood has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. This facility was observed abandoned on June 14, 2004, prior to Mr. Wood purchasing the property. Mr. Wood decided to push in the existing manure basin without properly land applying the manure in the basin. Failure to land apply the manure caused the manure to flow from the basin into a creek causing a fish kill. Therefore, \$2,000.00 is assessed for this factor.

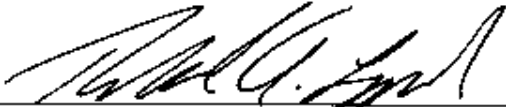
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**VII. WAIVER OF APPEAL RIGHTS**

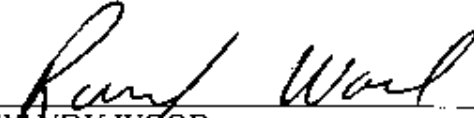
This administrative consent order is entered into knowingly and with the consent of Mr. Wood. For that reason Mr. Wood waives his rights to appeal this administrative consent order or any part thereof.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B. 191.

  
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RICHARD A. LEOPOLD, DIRECTOR  
Iowa Department of Natural Resources

Dated this 18 day of  
Dec., 2008.

  
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RANDY WOOD

Dated this 10 day of  
Dec., 2008.

No File Number; Kelli Book; DNR Field Office 6; Ken Hessenius; EPA; VIII.D.3.a